IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 581 OF 2001.

Pravin Dinkar Kadam. ... Appellant.

Versus.

Vasant Dadyu Kharat & others. ... Respondents.

Shri R.A.Thorat for the Appellant.

CORAM : ABHAY S.OKA, J.

DATED : 27th November, 2007.

P.C.:

1. Heard the learned Advocate for the Appellant. The Appellant is the unsuccessful original Plaintiff whose suit for perpetual injunction has been dismissed by the trial Court and the decree has been confirmed in appeal by the District Court. The submission of the Advocate for the Appellant is that considering the area of the land mentioned in the sale deed and considering the fact that the Appellant purchased 1/10th share, the Appellate Court was wrong in holding that the Appellant has not become the owner of the area of 93 Ares.

2. The sale deed dated 27th April 1978 clearly recites that the Plaintiff/Appellant purported to purchase an undivided share in the property. The finding of fact recorded by the Appellate Court is that there was no partition of the plot of land out of which undivided share was purchased. Therefore, the Courts below have held that in the absence of partition, the

Appellant cannot be said to be in exclusive possession. In the absence of partition, no specific finding can be recorded as regards the entitlement of the Appellant to any specific area on account of undivided share purchased by the Appellant as in a partition, equities are always adjusted. The entitlement of the Appellant to receive a particular area can be crystalised as and when the partition is effected by metes and bounds.

3. No substantial question of law arises. Subject to what is observed above, the Second Appeal is dismissed.

Judge.